

U.S. Pat. App. Ser. No. 10/520,604
Attorney Docket No. 10191/3959
Reply to Office Action of March 18, 2008

AMENDMENTS TO THE DRAWINGS:

Please amend Figures 1 and 3 by replacing them with the Replacement Sheet Figures for Figures 1 and 3. It is believed that the Replacement Figures are legible, and include proper labeling. Approval and entry are respectfully requested, as is withdrawal of the objections as to the drawings.

REMARKS

Claims 18 to 22 are added, and therefore claims 9 to 22 are now pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to paragraph three (3) of the Office Action, the drawings of Figures 1 and 3 are objected to because the figures should be more clearly labeled. Please amend Figures 1 and 3 by replacing them with the Replacement Sheet Figures for Figures 1 and 3. It is believed that the Replacement Figures are legible, and include proper labeling. Approval and entry are respectfully requested, as is withdrawal of the objections as to the drawings.

With respect to paragraph four (4) of the Office Action, the Specification is objected to because of asserted informalities on page 7, lines 8 and 14 to 19, as well as Figure 3, transition block 25. The Specification has been corrected herein as suggested. Accordingly, entry and approval of the amendments and withdrawal of the objections is respectfully requested.

With respect to paragraph eight (8) of the Office Action, claims 9, 10 and 12 to 17 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,009,368 (“Labuhn”) in view of U.S. Patent No. 5,781,103 (“Gilling”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of

U.S. Pat. App. Ser. No. 10/520,604
Attorney Docket No. 10191/3959
Reply to Office Action of March 18, 2008

obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 9 of the present application is directed to a method for notifying a driver of a motor vehicle equipped with an adaptive distance and speed controller, including the feature of one of activating or deactivating a takeover prompt which informs the driver that the vehicle is coming critically close to a target object. Applicants respectfully submit that the combination of the Labuhn reference and the Gilling reference do not disclose or suggest the feature of a takeover prompt which informs the driver that the vehicle is coming critically close to a target object, as provided for in the context of the presently claimed subject matter.

The Office Action, in paragraph 8(a), concedes that the Labuhn reference does not disclose the prompt as a takeover prompt, and therefore asserts that the Gilling reference discloses a takeover prompt. The Office Action asserts that the text of the Gilling reference at column 2, lines 35 to 43, discloses this feature. In fact, the cited portion of the Gilling reference merely refers to a system that informs the driver when the maximum braking force allowed by the system is being applied. This does not disclose the takeover prompt as provided for in the context of the presently claimed subject matter.

In particular, at column 2, lines 44 to 49, the Gilling reference specifically teaches away from use of its system as a warning (“This is not a collision warning/avoidance system which would, for example, compute the measured relative velocities, calculate ‘time to impact’ and advise the driver according to initiate emergency action; but rather provides simply an indication to the diver that the maximum breaking force is currently being employed.”). The prompt of the Gilling reference carries no indication of the criticality of the situation, and it does not inform the driver that the driver needs to initiate additional braking force.

In stark contrast, the takeover prompt of the present application informs the driver that the vehicle is coming critically close to the target object. The Gilling reference does not disclose or even suggest the takeover prompt as provided for in the context of the presently claimed subject matter. Therefore, the combination of the Labuhn and Gilling references does not disclose or even suggest all of the features of claim 9, so that claim 9 is allowable, as are its dependent claims 10, 12 and 13.

U.S. Pat. App. Ser. No. 10/520,604
Attorney Docket No. 10191/3959
Reply to Office Action of March 18, 2008

Claim 14 includes features like those of claim 9, and is therefore allowable for essentially the same reasons, as are its dependent claims 15 to 17.

Withdrawal of the rejections of claims 9, 10 and 12 to 17 is therefore respectfully requested.

With respect to paragraph nine (9) of the Office Action, claim 11 was rejected under 35 U.S.C. § 103(a) as unpatentable over the Labuhn reference in view of the Gilling reference, and further in view of U.S. Patent No. 5,230,400 ("Kakinami"), and further in view of U.S. Patent No. 6,178,372 ("Tabata").

Claim 11 includes features like those of claim 9, and is therefore allowable for essentially the same reasons Withdrawal of the rejection of claim 11 is therefore respectfully requested.

New claims 18 to 22 do not add any new matter and are supported by the present application, including the specification. Claims 18 and 19 depend from claim 14, and are therefore allowable for the same reasons as claim 14. Claims 20 to 22 depend from claim 9, and are therefore allowable for the same reasons as claim 9.

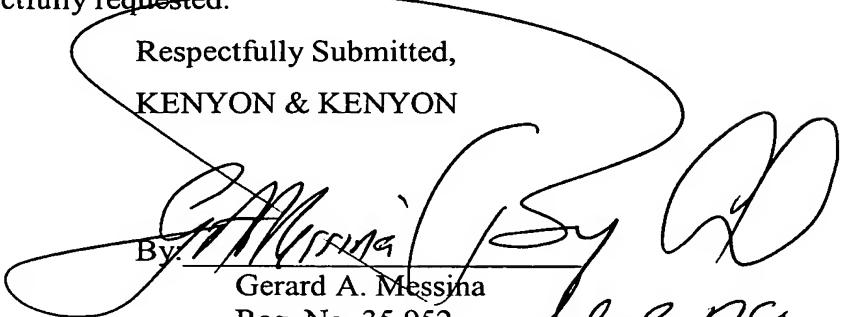
In sum, it is respectfully submitted that claims 9 to 22 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

Dated: 5/28/2008

Respectfully Submitted,
KENYON & KENYON

By: 
Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646